IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Bail Appl..No. 6993 of 2007()

CRIME NO.45/06 OF POOYAPPALLY POLICE STATION

: PETITIONER/ACCUSED NO.1

VIJAYAMMA, AGED 50 YEARS,
ROSE VILLA, KIZHAKKEKARA MURI,
VELIYAM VILLAGE, KOLLAM.

BY ADV. SRI.A.RAJASIMHAN

RESPONDENTS: COMPLAINANT

SUB INSPECTOR OF POLICE, POOYAPPALLY
POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6993 of 2007

Dated this the 26th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner, a woman, faces allegations in a crime registered under Section 3 of the Explosive Substances Act. The crux of the allegations against the petitioner is that she, as the person managing a quarry, caused an explosion using explosive substances without any legal authority in the quarry. As a result of the explosion from the granite quarry, heavy particles flew off and fell on the roof of a school resulting in injuries for the students.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He prays that the petitioner, a woman, may be granted anticipatory bail. He primarily relies on two grounds.

3. First of all, it is contended that the petitioner is not the person who manages the quarry. Admittedly she was the licencee for the former period. The licence of the petitioner has not been renewed. The petitioner raises a contention that after the expiry of the period of the valid licence, she has nothing to do with the quarry. The learned Public Prosecutor submits that the petitioner is only

trying to take advantage or her own conduct of not renewing the licence. The learned Public Prosecutor has placed the case diary before me. The learned Public Prosecutor relies on the statements of the eye witnesses as well as the quarry workers which will show that the petitioner was the one who was running the quarry. The learned Public Prosecutor, to a specifically pointed query, placed relevant data which shows that the petitioner was managing the affairs of the quarry and was the person who was present at the time when the explosion took place.

4. The learned counsel for the petitioner then submits that Section 3 of the Explosive Substances Act can have no application. At worst the allegations can be raised only under Section 9 B of the Explosive Substances Act. I do not find merit in this contention also as the gravamen of the allegations in this case is that an explosion was caused using the explosive substances and not merely possession of the explosives by the petitioner.

5. I shall not embark on a detailed discussion about the acceptability of the allegations or the credibility of the data collected. I am of opinion that there are no features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner must surrender before the learned Magistrate and then seek regular bail. Of course, she will be

entitled to urge before the Magistrate that she is entitled to the compassion in favour of the weaker sex under Section 437 Cr.P.C.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-